



Cross-Cutting Issues News for July 26, 2012

OGC CCILO, Quoc Nguyen, Tseming Yang, Neil Bigioni, Tim Williamson, Allyn Stern, Becky Dolph, Bertram Frey, Carl Dierker, Cyndy Mackey, David Allnutt, Eric Schaaf, Lydia Mary Grady to: Isales, Marcia Mulkey, Meg Silver, Nancy Marvel, Peter Ornstein, Robert Kaplan, Robert Moyer, Robert Ward, Suzanne Murray, Ben Harrison, David Cozad, Daniel Schramm, Mike Walker, Mindy Kairis 07/26/2012 10:22 AM

From: Mary Grady/DC/USEPA/US
To: OGC CCILO, Quoc Nguyen/DC/USEPA/US@EPA, Tseming Yang/DC/USEPA/US@EPA, Neil Bigioni/R3/USEPA/US@EPA, Tim Williamson/R1/USEPA/US@EPA, Allyn Stern/R10/USEPA/US@EPA, Becky Dolph/R7/USEPA/US@EPA, Bertram Frey/R5/USEPA/US@EPA, Carl Dierker/R1/USEPA/US@EPA, Cyndy Mackey/DC/USEPA/US@EPA, David Allnutt/R10/USEPA/US@EPA, Eric Schaaf/R2/USEPA/US@EPA, Lydia Isales/R3/USEPA/US@EPA, Marcia Mulkey/R3/USEPA/US@EPA, Meg Silver/R10/USEPA/US@EPA, Nancy Marvel/R9/USEPA/US@EPA, Peter Ornstein/R8/USEPA/US@EPA, Robert Kaplan/R5/USEPA/US@EPA, Robert Moyer/R9/USEPA/US@EPA, Robert Ward/R8/USEPA/US@EPA, Suzanne Murray/R6/USEPA/US@EPA, Ben Harrison/R6/USEPA/US@EPA, David Cozad/R7/USEPA/US@EPA, Daniel Schramm/DC/USEPA/US@EPA, Mike Walker/DC/USEPA/US@EPA, Mindy Kairis/DC/USEPA/US@EPA



CROSS-CUTTING ISSUES NEWS
JULY 26, 2012

BNA, Inc.
Daily Environment
REPORT

HIGHLIGHTS

Climate Change
House Bill Would Block EPA Power Plant Rule Until Carbon Capture Deemed Viable

House legislation introduced July 24 would block the Environmental Protection Agency from finalizing a rule requiring new coal-fired power plants to install carbon capture systems until such systems are economically and technologically...

Climate Change
Several Legal Issues Surrounding Climate Change Need to Be Resolved, Report Says

The courts still need to address liability for climate change impacts and various other legal issues related to greenhouse gases, the Congressional Research Service said in a new report....

Climate Change
Sierra Club Sues San Diego County Over Greenhouse Gas, Climate Measures

LOS ANGELES—The Sierra Club has filed a lawsuit challenging San Diego County's approval of greenhouse gas review standards and a climate action plan (Sierra Club v. County of San Diego, Calif. Super. Ct., No. 37-2012-00101054,...

Regulatory Policy
House Takes Up Amendments on Bill To Freeze Pending Major Federal Rules

The House began debate July 25 on amendments to a regulatory reform package that would halt all major pending federal regulations but only after Republicans were forced to fix a typographical error that appeared to suggest regulations would...

Transportation
N.C. Seeking Comment on Bridge Permit Application

RALEIGH, N.C.—The North Carolina Department of Environment and Natural Resources is accepting public comment through Aug. 11 on a permit application from the state Department of Transportation for replacing the aging Bonner Bridge...



Inside EPA Weekly Report, 7/27/12
<http://insideepa.com/Inside-EPA/Inside-EPA-07/27/2012/menu-id-67.html>

EPA's Mingo Appeal Claims Broad Power To Veto Corps' Discharge Permits

EPA is laying out a broad interpretation of its Clean Water Act (CWA) power to effectively veto projects by blocking their disposal specifications, an issue that could guide the agency's action as it weighs whether to preemptively block the controversial Pebble Mine project in Bristol Bay, AK, even before a permit has been sought.

Louisiana Files Suit Over EPA Rejection Of First State-Issued GHG Permits

The Louisiana Department of Environmental Quality (LDEQ) is suing EPA claiming that the agency erred by rejecting the first state-issued Clean Air Act permits to include greenhouse gas (GHG) limits, claiming that the decision was "improper" and unlawful under the air law because the permits met minimum federal requirements.



URANIUM:

Navajo Nation cleanup deal could pave way for N.M. mining

Manuel Quinones, E&E reporter

Published: Wednesday, July 25, 2012

The Navajo Nation finalized an agreement last week with Uranium Resources Inc. over the future of mining in northwestern New Mexico.

Eastern Navajo Diné Against Uranium Mining, or ENDAUM, a group long opposed to new uranium extraction operations in the area, said the deal requires the company to clean up legacy pollution in the area before mining can occur. It also gives the company limited access to tribal lands.

"The Navajo Nation doesn't currently have cleanup regulations under its Superfund law -- those regulations will have to be written," said group coordinator Leona Morgan. "ENDAUM will be engaged in this process to ensure that the highest cleanup standards are adopted to protect the community."

ENDAUM has long been fighting the uranium company over its plans to begin "in situ" leach uranium recovery in the Church Rock area of New Mexico near Gallup. The recovery method usually involves injecting water with oxygen and sodium bicarbonate underground to free uranium, and opponents are petitioning U.S. EPA to scrap a key water approval for the project (*Greenwire* , May 8).

Last year, after exhausting a number of legal options, the group took its case to the Inter-American Commission on Human Rights. And while Uranium Resources' agreement is with the Navajo Nation and not ENDAUM, activists see it as a victory in their quest to delay mining and clean up decades-old pollution (*Greenwire* , Dec. 13, 2011).

"We're skeptical that [Uranium Resources subsidiary] Hydro Resources will be able to pay for cleanup at Church Rock," said Eric Jantz, an attorney with the New Mexico Environmental Law Center. "In any event, ENDAUM and the people of Church Rock will be watching Hydro Resources and the Navajo Nation to ensure that their land and families are protected."

Jantz and ENDAUM say Uranium Resources had to pay a fine earlier this year for crossing into lands run by the Navajo Nation. The area is often called a checkerboard because of the many interconnecting plots of tribal, trust and private lands.

Mark Pelizza, Uranium Resources' safety and environment senior vice president, said the anti-mining group was making too much of the deal. The fine, for example, was \$50, he said.

"We are working with the Navajo Nation," he said in an interview. "But suffice it to say that we are in confidential negotiations."

Pelizza said the agreement stems from a previous deal with the Navajo Nation in which the company agreed to foot the bill to survey past pollution in the area. He said both parties were working on cleaning up the site to an "undefined level."

"It's our respect for the Navajo's desire to have these sites remediated before mining," he said. "We think this is a giant step forward, and that's why we stepped forward and volunteered this action."

Pelizza said the company hopes to break ground on the site later this year, but that does not mean mining will happen anytime soon, especially if the uranium market remains soft.

COAL:

Federal regulators say Alaska may have wrongly permitted mine

Manuel Quinones, E&E reporter

Published: Wednesday, July 25, 2012

The federal Office of Surface Mining is questioning a decision by Alaska regulators to allow mining operations on a controversial site in the southern part of the state.

Environmental and community advocates accuse Usibelli Coal Mine Inc. of developing its Wishbone Hill property illegally. They say the previous permit holder failed to begin mining within the necessary amount of time, making permits by the Alaska Department of Natural Resources invalid.

Now, in one of the most significant developments of a long-running and escalating debate, a preliminary assessment by OSM indicates that indeed the company may not have valid permits. Usibelli acquired the Wishbone Hill site in 1997.

"[I]t would appear that the permits terminated as a matter of law and that DNR's purported renewal of the permits was also invalid," Kenneth Walker, manager of OSM's Denver field office, wrote in a July 19 letter to the state.

Walker asked state regulators for more information, which he called "necessary to provide clarity with regard to the validity of the Wishbone Hill permits."

Wishbone Hill is one of several coal mining projects in Alaska that is causing controversy with residents worried about pollution and lower property values. Development and population growth have edged people closer to historic mining areas, they say.

Tim Leach, conservation director for the group Friends of Mat-Su, called OSM's letter "a clear affirmation that the state and [Usibelli] have not been doing their due diligence to protect the health of our communities."

Community groups, including the Sierra Club's Alaskan chapter, sued Usibelli in U.S. District Court earlier this year over the same permit issue (*Greenwire* , May 3). The litigation is ongoing as OSM reviews the allegations.

Russell Kirkham, manager of Alaska's coal regulatory program, said his agency is still reviewing the federal agency's letter and weighing how to respond. The state Department of Natural Resources has called the permits valid.

"DNR considers the Wishbone Hill permits valid under the Alaska Surface Coal Mining and Reclamation Act," the agency wrote in January, "and has not acted in an arbitrary and capricious manner by failing to order a citizen's inspection or declining to order cessation of mining activities at Wishbone Hill."

Lorali Simon, spokeswoman for Usibelli's Wishbone Hill project, was more direct: "The Obama administration is trying to bully the state of Alaska by second-guessing permitting decisions that were made 16 years ago."

The broader issue is an ongoing fight between states and the administration over OSM's willingness to get involved in individual permitting decisions when necessary. The dispute could end up in court with states calling the agency's actions an infringement on states' rights and a violation of the Surface Mining Control and Reclamation Act.

In West Virginia, the Department of Environmental Protection is fighting the prospect of federal intervention over its retroactive renewal of an Alpha Natural Resources Inc. permit (*Greenwire* , June 13). The dispute there closely resembles the one in Alaska.

"Congress allowed states that wished to do so to obtain 'exclusive' jurisdiction within their borders," West Virginia DEP wrote last month to OSM's Appalachian regional director, Thomas Shope.

DEP officials contend that because Alpha isn't mining on the site, there isn't a violation of state oversight. "OSM is attempting to involve itself in what is essentially an appeal of the permit extension," the agency's letter said.

OSM and Interior Department leaders have defended the increased oversight as an effort to catch problems before they get out of hand and fully enforce the existing mining laws.

But for the likes of Usibelli's Simon, "It is appalling that OSM continues its attack on states' rights."

REGULATIONS:

Dems zing GOP for reform-bill typo that took 'un' out of 'unemployment'

Emily Yehle, E&E reporter

Published: Wednesday, July 25, 2012

Democrats will not agree to fix a typo in the Republican regulatory reform package that would implement a rules moratorium until the national unemployment rate hits 94 percent.

The typo -- which left the "un" out of "unemployment" -- drastically changes a bill meant to halt most major rules until the unemployment rate drops to 6 percent. Under its current form, the moratorium would last until the employment rate was 6 percent and most Americans were out of a job.

In remarks at a *Christian Science Monitor* breakfast this morning, House Minority Whip Steny Hoyer (D-Md.) said Democrats would not agree to a unanimous consent to fix the bill. That means Republicans will have to start the process over, sending the bill back to the House Rules Committee.

"I know Republicans read the bills," Hoyer said, according to *Roll Call* . "My, my, my, how carefully they read that bill."

But Republicans have not indicated that they will delay the bill. Rules spokesman Doug Andres pointed out in an email that Democrats have acknowledged that the typo was an error, and he referred to a unanimous consent to fix a mistake in the 111th Congress for the Small Business Jobs Act of 2010. The bill passed on a party-line vote in a Democratic-controlled House.

"We acknowledged the error and offered an easy way to fix the issue, but the Democrats don't seem to be interested in actually solving problems," Andres said. "We will act to fix this at the earliest opportunity."

Democrats have pounced on the error as an example of Republicans' sloppy political posturing.

"The Republicans have made a big typo in their latest message bill to nowhere," said Drew Hammill, spokesman for Minority Leader Nancy Pelosi (D-Calif.). "Looks like they should stop harping about 'red tape' and start looking for the Wite-Out."

The package -- H.R. 4078 -- is a combination of seven GOP bills that seek to slow down a regulatory process Republicans say is killing jobs (*Greenwire* , July 23). Since passage in the Democratic-controlled Senate is unlikely, the House vote is mostly a political one.

But Republicans scoffed at Democrats' apparent glee in finding the error.

"Unemployment in America has been above 8 percent for 41 straight months," said Erica Elliott, spokeswoman for Majority Whip Kevin McCarthy (R-Calif.). "The fact that the Democrats are making a crusade out of a typo shows their lack of commitment to serious debate about how to get this country back on track."

WATER:

'We're not going to sit here and twiddle our thumbs,' Gov. Brown says of delta plan

Debra Kahn, E&E reporter

Published: Wednesday, July 25, 2012

SACRAMENTO, Calif. -- Federal and state officials touted plans today for building water passages under the Sacramento-San Joaquin Delta, saying it would help both imperiled fish and farmers.

Interior Secretary Ken Salazar said the tunnels would help the fish that are now sucked into pumps drawing water for farms and other water users south of the delta.

Building two tunnels underneath the dilapidated delta that are capable of carrying water at a rate of 9,000 cubic feet per second (cfs) "would essentially negate the killing effect that we have from the large pumps that currently take the water across the delta," Salazar said.

"As broken and outdated as California's water system is, we are also closer than ever to forging a lasting and sustainable solution that strengthens California's water security and restores the health of the delta," he said.

Officials acknowledged there would still be years of controversy ahead. The Interior Department and the state Department of Fish and Game plan to release environmental analyses this fall that will examine a range of alternatives, including conveyances with capacities from 3,000 to 15,000 cfs.

"We're not dealing with perfection," Gov. Jerry Brown (D) said. "We look at Wall Street, we look at the Catholic Church, we look at the *Sacramento Bee* ... they're not perfect either. ... More intelligent thought is going into this plan than is going into most of those other institutions."

Like the seawater that officials are worried could inundate delta levees in the event of an earthquake, Brown's language turned salty as he vowed to push the plan through.

"At this stage, as I see many of my friends dying ... I want to get shit done," the 74-year-old third-term governor said. "We're going to take into account the opposition, but we're not going to sit here and twiddle our thumbs."

An official from the National Oceanic and Atmospheric Administration's National Marine Fisheries Service, which had criticized an earlier water plan for not analyzing the effects on fish in enough detail, voiced support for the new proposal.

"NOAA strongly believes that the successful completion of the Bay Delta Conservation Plan provides the most promising pathway for meeting the coequal goals" of habitat restoration and water supply reliability, NMFS Assistant Administrator Eric Schwaab said. "Completing work on the Bay Delta Conservation Plan will allow us to greatly reduce ... reliance on south Delta diversions, and thereby avoid the very serious problem that the current operating approach has caused for young salmon for many years as well as other native fisheries in the system."

The announcement didn't mollify environmental groups, which are holding a rally here today to call for more species protections.

Sierra Club California released a statement criticizing the plan's lack of detail, including how it will offset any negative environmental impacts.

"It's disappointing in this day and age that we have to continue to discuss whether large, expensive tunnels with no environmental safeguards and many harmful impacts are the right solution for California's water troubles," senior advocate Jim Metropulos said. "We don't need 19th-century solutions to today's problems."

Agricultural interests praised the announcement. "We applaud the leadership of Governor Brown and Secretary Salazar and the hard work of the state and federal agencies that have worked so well in partnership," said Irvine, Calif.-based Western Growers President and CEO Tom Nassif. "The Bay Delta Conservation Plan has reached an important milestone that would have remained elusive without this leadership and focus."

WATER:

Calif., Interior to release more Bay-Delta details

Debra Kahn, E&E reporter

Published: Wednesday, July 25, 2012

The federal and state architects of a plan to restructure the Sacramento-San Joaquin River Delta are adding a new chapter to the years-long saga today.

Today in Sacramento, Calif., Interior Secretary Ken Salazar, California Gov. Jerry Brown (D) and National Marine Fisheries Service Assistant Administrator Eric Schwaab will reveal more details of a six-year plan to build a diversion around the crumbling delta, which supplies water to more than 25 million Californians as well as endangered and threatened species.

Officials have been shopping the plan around for the past month to lawmakers, environmental groups, regional governments and agricultural interests. The main concept is a pair of tunnels underneath the delta that would carry water from the Sacramento River directly to communities south of the area. The tunnels would have intake pipes capable of diverting 9,000 cubic feet of water per second in total, lowered from a proposal earlier this year that would have maxed out at 15,000 cfs.

"It's sort of a no-surprises rule," said state Natural Resources Department spokesman Richard Stapler. "We're briefing everybody as we go along."

Stapler stressed that the plan is not binding; nothing will be formally decided until officials release their federal- and state-mandated environmental impact report on the plan and its alternatives in the fall, he said.

Despite the efforts at transparency, the bitter fighting between environmentalists and water users south of the delta is guaranteed to continue.

Immediately after Brown and Salazar's news conference, the plan's critics will hold a protest rally. Rep. John Garamendi (D), backed by state legislators, environmentalists and fishermen, will call for an increased emphasis on water storage, water recycling, conservation, levee repairs and habitat restoration.

"The biggest thing the species in the delta need are flows," said Jim Metropulos, senior advocate for Sierra Club California. "We need a system of different flows for different times of year depending on when species need fresh water for spawning and other events in their life cycle. Those things do not seem to be thought of yet, so that is where we're at."

In contrast, the beneficiaries of the water are hoping that today's announcement will resolve concerns about the effects of the plan on delta fish. The National Marine Fisheries Service and the California Department of Fish and Game filed [comments](#) earlier this year about the effects of diverting 15,000 cfs on longfin smelt, delta smelt, salmon, steelhead and other species.

"The fishery agency concerns caused an additional delay in the planning process," said Jason Peltier, deputy general manager of the Westlands Water District, which supplies irrigation water to about 600,000 acres of farmland in the San Joaquin Valley.

"If [the announcement] is 'We have found and committed to a path that gets us around the concerns raised by the fisheries agencies,' then it's a really, really big deal," he said.

DROUGHT:

Dry conditions create ideal waterfowl habitat

Published: Wednesday, July 25, 2012

This summer's drought has helped wildlife managers cultivate ideal habitat conditions at migratory bird refuges in the Illinois River Valley.

In the fall, migrating ducks feed on moist soil plants that sprout during the summer when wetlands and backwater lakes start to dry out. But in recent years, high water conditions on the Illinois River have made it tough to get water levels down low enough for the plants to sprout. Managers use levees and pumps to recreate the natural cycles of wet and dry, but this year, Mother Nature has helped with the job.

"For us, this low-water, low-rainfall situation is allowing us to do this drawdown," said Robert Clevenstine, acting manager of the Illinois River National Wildlife and Fish Refuges. "We haven't been able to do this since 2005."

These natural conditions, combined with reports of record numbers of ducks on breeding grounds in the northern United States and Canada, have waterfowl hunters excited for a strong fall season (Chris Young, [AP/San Francisco Chronicle](#) , July 25). -- AS

ClimateWire -- Thu., July 26, 2012 -- [Read the full edition](#)

1. AGRICULTURE: Could Africa hold the answers to America's drought woes?

The world's poorest continent could offer clues to how America's farmers might cope with a hotter, drier climate, leading agriculture experts say. In the African Sahel -- the belt of semiarid savanna running from the Atlantic Ocean to the Red Sea -- farmers have successfully fought back an expanding Sahara and turned once dry, uncultivated scrub into highly productive farmland. The key to their success

has been allowing trees to grow, where they once cut them down, and adopting agricultural techniques that took full advantage of scarce water resources. Now experts say it is time for American farmers to recognize the benefits that trees can bring to even the most arid plots of land.

TODAY'S STORIES

- 2. **TRADE:** Solar anti-dumping war moves from U.S. to Europe
- 3. **RENEWABLE ENERGY:** Wind farm opponents seize new political clout
- 4. **SCIENCE:** Discovering an Antarctic 'Grand Canyon'
- 5. **BIOFUELS:** Corn-for-ethanol backlash intensifies in drought's foreground
- 6. **NATIONS:** Report finds 'incredible' renewable potential under the Dominican sun
- 7. **DROUGHT:** Rain provides relief to drought-stricken U.S., but more is needed
- 8. **EMISSIONS:** Australian voters oppose carbon tax
- 9. **POLITICS:** Environmentalists lobby Canadian provinces to embrace renewable energy
- 10. **RENEWABLE ENERGY:** German utility postpones offshore wind project, citing liability concerns

E&ETV's OnPoint

- 11. **BIOFUELS:** Largest biodiesel producer discusses impact of fuels credit fraud on market

EnergyWire
TODAY'S EDITION: Thursday, July 26, 2012 -- 09:19 AM [Read full edition](#)

- 1. **ENFORCEMENT:**
EPA says Dimock water safe, but Cabot still can't drill there

U.S. EPA yesterday ended the latest chapter in the turbulent drilling dispute in Dimock, Pa., finding that contaminant levels in its water show no health threat and no connection to hydraulic fracturing chemicals. The action, however, does not change state officials' case against Cabot Oil and Gas for contaminating water wells in the community with methane. The Pennsylvania Department of Environmental Protection still has not cleared Cabot to drill in areas of Dimock Township where it ordered wells shut down in 2009. That case focused on poor well construction, not problems with fracturing. [Go to story #1](#)

THIS MORNING'S STORIES

- 2. **ENERGY MARKETS:**
Sizzling summer heat lifts natural gas prices
- 3. **CALIFORNIA:**
Draft fracking regulations at least 2 months away -- official
- 4. **OIL AND GAS:**
Drilling rigs in Colo. must be farther from homes, schools and hospitals -- conservationists
- 5. **PIPELINES:**
Money ultimatum could challenge Northern Gateway project
- 6. **BUSINESS:**
Hess CEO marks 'midpoint' of spending surge
- 7. **BUSINESS:**
Newly independent ConocoPhillips 'off to a strong start' despite earnings drop
- 8. **HYDRAULIC FRACTURING:**
University of Texas probes conflict accusations against researcher
- 9. **NATURAL GAS:**
Encana reports second-quarter loss amid Chesapeake probe
- 10. **OFFSHORE DRILLING:**
Buyout in Canada could be used to gain foothold in Gulf

=====

NEW ARTICLE

79 U. Chi. L. Rev. 471
University of Chicago Law Review Spring 2012
WHICH SCIENCE? WHOSE SCIENCE? HOW SCIENTIFIC DISCIPLINES CAN SHAPE ENVIRONMENTAL LAW
Eric Biber

Environmental law fundamentally depends on the production of information by environmental science. However, the inevitable uncertainty in environmental science means that policy will necessarily intertwine with science, allowing for the concealment of value choices and trade-offs by agencies, interest groups, and politicians under a patina of science. Scholars and decision makers have

struggled over how to resolve this “science charade.” This Article proposes a new approach to the underlying challenge by closely examining the diversity of scientific disciplines in environmental law. Scientific disciplines each develop their own perspectives that are based in part on values and that shape the information they produce. Understood this way, the intersection of law and science can be greatly simplified. Instead of attempting to separate science and policy out for every significant individual decision, we can make generalizations about how science and policy will interact depending on the discipline that produces the relevant information. We can also understand scientific disciplines as essential components to the designing of any regulatory or management system. For instance, particular disciplines might be privileged in the legal or institutional structure to help advance specific policy goals; we might insulate the decision-making process from disciplines that interfere with the accomplishment of those goals; or, we might balance multiple disciplines in order to reduce the risk of disciplinary blind spots that interfere with policy



Westlaw_Document_16_02_21.doc

Brought to you by the Office of General Counsel Law Library